

RECOVERY ACCOUNT INFORMATION

RE 806 (Rev. 1/02)

Overview

The enclosed materials will assist claimants in the filing of an application for payment from the Real Estate Recovery Account. You should also be aware of several important prerequisites for an application to qualify for payment:

- A final judgment or criminal restitution order (CRO) based on fraud, misrepresentation, deceit, made with intent to defraud; or conversion of trust funds;
- The judgment must be based on a transaction in which the judgment debtor/licensee was licensed at the time, and was performing acts for which a real estate license was required;
- Diligent pursuit of any assets of all judgment debtors;
- Diligent pursuit of any other person who may have been liable in the transaction;
- Filing of the application with the Department of Real Estate no more than one year after the judgment became final or the CRO was issued;
- The underlying judgment and debt must not have been discharged in bankruptcy; in the case of a bankruptcy proceeding that is open at the time of filing of the application, the judgment and debt must be declared to be nondischargeable; and
- A statement by the claimant, signed under penalty of perjury, that the complaint upon which the underlying judgment is based was prosecuted conscientiously and in good faith or that, in the case of a CRO, claimant has not failed to pursue in a civil action all persons liable to the claimant in the transaction, except a criminal defendant subject to the CRO. See Part IX of the attached Instructions to Claimants (RE 807) for a definition of the phrase "conscientiously and in good faith."

Time Frames

The Department has 15 days within which to notify the claimant of any deficiencies in the application. Once the application is substantially complete, the Department has 90 days in which to make a decision whether and how much of the amount claimed should be paid. If no action is taken by the Department within 90 days after the substantially complete date, the application is automatically denied. The claimant will be notified by the Department when the application is substantially complete, and will also be notified of the final decision on the application.

Judgment Debtor Response

The judgment debtor has the opportunity to respond and object to any payment. If the judgment debtor files a response, which must also be served on the claimant, the claimant and judgment debtor will be given the opportunity to submit written argument.

If the application is denied, the claimant will have six months from mailing of the notice of the denial to file a verified application in court. If the decision is to make a payment, a judgment debtor who has filed a response has 30 days after receipt of the notice to petition for a writ of mandamus for a judicial review of the suspension of his or her real estate license which would result from a payment.

Substantially Complete Application

There are two ways to make an application substantially complete:

1. Supply everything required by statute and regulation;
 - a. Everything required by statute (Section 10471(c) of the Business and Professions Code), which would be accomplished by proper completion of Part I of the application; and
 - b. Meet all the requirements of Regulation 3102; or
2. Supply all the information required by statute, and enough additional information for the Department to make a determination on the merits of the application. Part II of the application is an attempt to be a guide as to what should suffice in most cases. If what is supplied does suffice, the Department will notify all parties that the application is substantially complete. If more is required, the claimant will be notified of what is needed.

Summary

This information is intended to be a brief overview of the process of filing a recovery account application with the Department. Further details regarding procedures, requirements and limitations are contained in the accompanying instructions. In order to expedite handling of the application, it is recommended that it be served on the Department by certified mail at the following address:

Department of Real Estate
Recovery Account Unit
P.O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

Enclosures

RE 807	Recovery Account – Instructions to Claimants
RE 807A	Recovery Account – Application for Payment
RE 809	Recovery Account – Notice to Judgment Debtor
RE 810	Proof of Service – Personal
RE 811	Proof of Service – Certified Mail
RE 812	Proof of Service – Publication